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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,423	07/18/2003	Terry A. Miller	MILLERT-I	1748
7590	10/21/2005		EXAMINER	
Eric A. LaMorte LaMorte & Associates, P.C. P.O. Box 434 Yardley, PA 19067			VALENTI, ANDREA M	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 10/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/621,423	MILLER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Andrea M. Valenti	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 12 August 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,3,7-13,15,18 and 19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1, 3, 7-13, 15, 18, 19 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date: _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 7, 8, 10-13, 15, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,651,601 to La Montagne in view of United Kingdom Patent GB 1544630 to James and U.S. Patent No. 3,962,825 to O'Connell.

Regarding Claims 1, 8, 10, 11, and 15, La Montagne teaches a reusable floral arrangement assembly and method comprising a water (La Montagne Fig. 3) impermeable tray having a top surface, a bottom surface a continuous side wall (La Montagne see attached Fig. 5) that extends upwardly from the top surface; a connector (La Montagne Fig. 3 #2) disposed on the bottom surface of the tray; a support (La Montagne Fig. 2 #19 and 18) for holding the tray, wherein the support is selectively attachable to the connector on the bottom surface of the tray; a foam element that include a base level element (La Montagne Fig. 3 #10) wherein the base level element rests upon the top surface of the tray and; and a grid work (La Montagne Fig. 3 #14) extending over the foam structure, the grid work having an open bottom edge that selectively engages the continuous wall of the tray with a snap connection (La Montagne Col. 2 line 46-50), wherein the grid work of evenly distributed size areas envelopes the foam structure and holds the foam structure in a set position on the tray

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while the grid work demarcates both the vertical surfaces and the horizontal surfaces exposed on the foam structures into a plurality of sized areas (La Montagne Fig. 2 and 6 #14).

La Montagne is silent on a plurality of foam elements wherein the base level element and the at least one subsequent level element differ in size and are stacked atop each other forming a foam structure having a tiered configuration with exposed vertical surfaces and horizontal surfaces. However, James teaches that it is old and notoriously well-known to place multiple levels of foam on a tray surface (James Fig. 4 #1 and 11) cover by grid work that exposes the foam structure. It would have been obvious to one of ordinary skill in the art to modify the teachings of La Montagne with the teachings of James at the time of the invention since the modification is merely a duplication of a known element performing the same intended for a multiple effect to increase the flower insertion area for a larger arrangement (James page 3 line 39-55).

La Montagne as modified is silent on the foam layers are different sizes to produce a tiered configuration. However, O'Connell teaches that it is old and notoriously well-known to attached tiered structures to a floral tray (O'Connell Fig. 1 #12 10 and 11). It would have been obvious to one of ordinary skill in the art to further modify the teachings of La Montagne with the teachings of O'Connell since the modification is merely a change in size/shape for a desired aesthetic appearance and does not present a patentably distinct limitation [*In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966)].

Regarding Claim 7 and 12, La Montagne as modified teaches the support is selected from the group consisting of bouquet handles, centerpiece stands (La Montagne Fig. 3 #19 and 18) and ground spikes.

Regarding Claim 13, 18 and 19, La Montagne as modified is silent on the base layer element and the at least one subsequent layer element are cog shaped having a plurality of square protrusions extending therefrom. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of La Montagne at the time of the invention since applicant provides no criticality for the cog configuration and the modification is merely a change in shape for a desired aesthetic appeal to meet the theme for a particular event decoration and does not present a patentably distinct limitation [*In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966)].

Claims 3 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,651,601 to La Montagne in view of United Kingdom Patent GB 1544630 to James and U.S. Patent No. 3,962,825 to O'Connell as applied to claim 1 and 8 above, and further in view of French Patent FR 2620591 to Roder.

Regarding Claim 3 and 9, La Montagne as modified is silent on the tray includes at least one prong that extends up into the foam structure, thereby helping retain the plurality of disposable foam elements in the set position on the tray. However, Roder teaches a floral display tray with at least one prong (Roder Fig. 1 #4). It would have been obvious to one of ordinary skill in the art to further modify the teachings of La

Montagne at the time of the invention for the known advantage of securing the foam in place for ease of assembly.

***Response to Arguments***

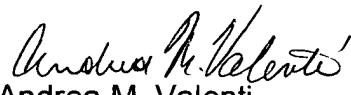
Applicant's arguments with respect to claims 1, 3, 7-13, 15, 18, 19 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Andrea M. Valenti  
Patent Examiner  
Art Unit 3643